

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG

JEFFERSON COUNTY COMMISSION,
PATRICIA NOLAND, as an individual
and behalf of all others similarly situated,
and DALE MANUEL, as an individual and
behalf of all others similarly situated,

Plaintiffs,

v.

Civil Action No. 3:11-cv-00096
(King, J., Bailey, J., and Berger, J.)

NATALIE E. TENNANT, in her capacity as
the Secretary of State, EARL RAY TOMBLIN,
in his capacity as the Chief Executive Officer
of the State of West Virginia, JEFFREY
KESSLER, in his capacity as the Acting
President of the Senate of the West Virginia
Legislature, and RICHARD THOMPSON, in
his capacity as the Speaker of the House of
Delegates of the West Virginia Legislature.

Defendants.

JOINT ANSWER OF JEFFREY KESSLER AND RICHARD THOMPSON

Jeffrey Kessler, in his official capacity as President of the West Virginia Senate, by
his undersigned counsel, and Richard Thompson, in his official capacity as Speaker of the
West Virginia House of Delegates, by his undersigned counsel, appear and file this Joint
Answer:

1. President Kessler and Speaker Thompson admit the allegations in paragraph 1
of the Complaint.

2. President Kessler and Speaker Thompson admit the allegations in paragraph 2
of the Complaint.

3. President Kessler and Speaker Thompson admit the allegations in paragraph 3 of the Complaint.

4. President Kessler and Speaker Thompson admit the allegations in paragraph 4 of the Complaint.

5. President Kessler and Speaker Thompson admit the allegations in paragraph 5 of the Complaint.

6. President Kessler and Speaker Thompson admit the allegations in paragraph 6 of the Complaint President Kessler as to the allegation that President Kessler is sued in his official capacity, but deny that he is the Acting President of the West Virginia Senate as he was elected President of the West Virginia Senate on November 14, 2011 pursuant to the provisions of Article 6, § 24 of the West Virginia Constitution.

7. President Kessler and Speaker Thompson admit the allegations in paragraph 7 of the Complaint.

8. With respect to the allegations in paragraph 8 of the Complaint, President Kessler and Speaker Thompson admit that they have certain duties as provided by the West Virginia Constitution and the laws of the State of West Virginia. They further admit that Section 4 of Article I of the West Virginia Constitution sets forth certain requirements regarding the election of West Virginia members to the United States House of Representatives, and further aver that they and the West Virginia Legislature complied with all applicable provisions of West Virginia and federal law regarding redistricting.

9. President Kessler and Speaker Thompson admit the allegations in paragraph 9 of the Complaint.

10. President Kessler and Speaker Thompson admit the allegations in paragraph 10 of the Complaint.

11. President Kessler and Speaker Thompson admit the allegations in paragraph 11 of the Complaint.

12. President Kessler and Speaker Thompson admit the allegations in paragraph 12 of the Complaint.

13. President Kessler and Speaker Thompson admit the allegations in paragraph 13 of the Complaint.

14. President Kessler and Speaker Thompson admit the allegations in paragraph 14 of the Complaint.

15. President Kessler and Speaker Thompson admit the allegations in paragraph 15 of the Complaint.

16. President Kessler and Speaker Thompson deny the allegations in paragraph 16 of the Complaint.

17. President Kessler and Speaker Thompson deny the allegations in paragraph 17 of the Complaint except that, to the extent alleged, they admit that the Senate Select Committee on Redistricting considered but never agreed to a plan in which the population variance from the least to the most populated district was 0.0%.

18. President Kessler and Speaker Thompson admit the allegations in paragraph 18 of the Complaint.

19. President Kessler and Speaker Thompson admit the allegations in paragraph 19 of the Complaint.

20. President Kessler and Speaker Thompson admit the allegations in paragraph 20 of the Complaint.

21. President Kessler and Speaker Thompson admit the allegations in paragraph 21 of the Complaint.

22. President Kessler and Speaker Thompson admit the allegations in paragraph 12 of the Complaint that on August 5, 2011, the West Virginia Senate voted to pass Senate Bill 1008, reapportioning congressional districts and that, under Senate Bill 1008, Mason County was move from the current Second Congressional District into the Third Congressional District.

23. President Kessler and Speaker Thompson admit the allegations in paragraph 23 of the Complaint.

24. President Kessler and Speaker Thompson admit the allegations in paragraph 24 of the Complaint.

25. President Kessler and Speaker Thompson admit the allegations in paragraph 25 of the Complaint.

26. President Kessler and Speaker Thompson admit the allegations in paragraph 26 of the Complaint.

27. President Kessler and Speaker Thompson deny the allegation in paragraph 27 of the Complaint that Senate Bill No. 1008, as originated, provided for a variance of 0.0%, except that, to the extent alleged, they admit that the Senate Select Committee on

Redistricting considered but never agreed to a plan in which the population variance from the least to the most populated district was 0.0%. President Kessler and Speaker Thompson admit, however, that Enrolled Senate Bill No. 1008 has a difference of 4,871 people and a variance 0.79%.

28. President Kessler and Speaker Thompson admit the allegations in paragraph 28 of the Complaint.

29. President Kessler and Speaker Thompson deny the allegations in paragraph 29 of the Complaint.

30. President Kessler and Speaker Thompson admit the allegations in paragraph 30 of the Complaint.

31. President Kessler and Speaker Thompson deny the allegations in paragraph 31 of the Complaint.

32. In response to paragraph 32 of the Complaint, President Kessler and Speaker Thompson incorporate their responses to paragraphs 1 through 31 of the Complaint.

33. President Kessler and Speaker Thompson deny the allegations in paragraph 33 of the Complaint.

34. President Kessler and Speaker Thompson deny the allegations in paragraph 34 of the Complaint.

35. President Kessler and Speaker Thompson deny the allegations in paragraph 35 of the Complaint.

36. In response to paragraph 36 of the Complaint, President Kessler and Speaker Thompson incorporate their responses to paragraphs 1 through 35 of the Complaint.

37. President Kessler and Speaker Thompson admit the allegations in paragraph 37 of the Complaint that Article I, § 4 of the Constitution of West Virginia contains requirements regarding the contiguity, population and shape of congressional districts but aver that the complete provision is as follows:

For the election of representatives to Congress, the state shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain, as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the constitution of the United States.

38. President Kessler and Speaker Thompson deny the allegations in paragraph 38 of the Complaint.

39. In response to paragraph 39 of the Complaint, President Kessler and Speaker Thompson incorporate their responses to paragraphs 1 through 38 of the Complaint.

40. President Kessler and Speaker Thompson admit the allegations in paragraph 40 of the Complaint that Article I, § 4 of the Constitution of West Virginia contains requirements regarding the contiguity, size and shape of congressional districts but aver that the complete provision is as follows:

For the election of representatives to Congress, the state shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain, as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the constitution of the United States.

41. President Kessler and Speaker Thompson deny the allegations in paragraph 41 of the Complaint.

42. President Kessler and Speaker Thompson deny all allegations in the Complaint not expressly admitted.

43. President Kessler and Speaker Thompson agree that it is appropriate that the Court take steps to convene a three-judge panel pursuant to 28 U.S.C. § 2284 but deny the remaining allegations in the Prayer for Relief in the Complaint and further deny that plaintiffs are entitled to any relief.

44. President Kessler and Speaker Thompson request that the Court expedite proceedings to allow for the timely completion of the 2012 elections.

45. President Kessler and Speaker Thompson request that the Court, pursuant to 28 U.S.C. § 1404(a), transfer this action to the United States District Court for the Southern District of West Virginia at Charleston for the convenience of the majority of the parties, the Court, and the majority of Counsel. Alternatively, President Kessler and Speaker Thompson request that the Court conduct in-person proceedings in this case at the Robert C. Byrd Federal Courthouse in Charleston, West Virginia.

WHEREFORE, based on the foregoing, President Kessler and Speaker Thompson PRAY that the Court enter judgment confirming the constitutionality of Senate Bill 1008, deny all of the relief requested in the Complaint, and dismiss this action with prejudice.

**JEFFREY KESSLER, in his
capacity as President of
West Virginia West Virginia Senate**

By Counsel

/s/ George E. Carenbauer

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**RICHARD THOMPSON, in his
capacity as the Speaker of the
West Virginia House of Delegates**

By Counsel

/s/ Anthony J. Majestro*

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**Admission Pending*

/s/ Cynthia A. Majestro

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Defendants.

CERTIFICATE OF SERVICE

I, Cynthia A. Majestro, do hereby certify that on December 1, 2011, I electronically filed the **JOINT ANSWER OF JEFFREY KESSLER AND RICHARD THOMPSON** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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